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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,601	02/19/2002	Olga Bandman	PF-0544USN	2590

27904 7590 12/31/2002

INCYTE GENOMICS, INC.  
3160 PORTER DRIVE  
PALO ALTO, CA 94304

EXAMINER
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BASKAR, PADMAVATHI

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 12/31/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/719,601	BANDMAN ET AL.
	Examiner Padmavathi v Baskar	Art Unit 1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-20 are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## RESTRICTION

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-2, 13, and 17 drawn to polypeptide, pharmaceutical composition and a method of treatment. Further restriction to one SEQ.ID.NO required (see paragraph # 3).

Group II, claims 3-11 and 12 drawn to DNA, vector, host cell and a process. Further restriction to one SEQ.ID.NO required (see paragraph # 3).

Group III, claim 14 drawn to an antibody. Further restriction to one SEQ.ID.NO required (see paragraph # 3).

Group IV, claim 15, drawn to a purified agonist. Further restriction to one SEQ.ID.NO required (see paragraph # 3).

Group V, claim 16, drawn to a purified antagonist. Further restriction to one SEQ.ID.NO required (see paragraph # 3).

Group VI, claim 18 drawn to a method of diagnosing using antagonist. Further restriction to one SEQ.ID.NO required (see paragraph # 3).

Group VII, claims 19-20 drawn to a method for detecting a polynucleotide by hybridization. Further restriction to one SEQ.ID.NO required (see paragraph # 3).

The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

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Group I is directed to a polypeptide, Pharmaceutical composition and a method of treatment or prevention using the product polypeptide which is the first product and first method of using the product. The special technical feature is the polypeptide, which is made up of amino acids. Groups II-V are drawn to structurally different products such as nucleic acids, antibodies, agonist (chemical agents) and antagonist (anti-microbial compounds) which do not require each other for their practice and do not share the same or a corresponding technical feature. The Group VI and VII inventions are drawn to methods having different goals, method steps and starting materials, which do not require each other for their practice and do not share the same or a corresponding technical feature. Note that PCT Rule 13.2 does not provide for multiple products or methods within a single application. Since the special technical feature of the Group I invention is not present in the Group II-VII claims, and the special technical features of the Group II-VII inventions are not present in the Group I claims, unity of invention is lacking.

#### DISTINCT INVENTIONS

3. For each group of inventions I-VII above, restriction to one of the following SEQ.ID.NO is also required under 35 U.S.C. 121 and 372. Therefore, election is required of one of inventions I - VII and one of SEQ ID NO: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 or 12

Inventions SEQ ID NO: 1 - SEQ ID NO: 12 are not linked under PCT Rule 13.2 because they lack the same or corresponding special technical features for the following reasons:

SEQ.ID.N0S: 1-12 represent structurally different polypeptides and the polynucleotides encoding them. Therefore, where structural identity is required, such as for hybridization or expression, the different sequences have different effects. Thus, each sequence is unique and patentably distinct since each sequence has a different structure with specific amino acid or nucleic acid and is identified by a specific SEQ.ID.NO and thus lacks the same or corresponding

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special technical features. Applicant is required under 35 U.S.C. 121 and 372 to elect a single disclosed SEQ.ID.NO from any group elected.

4. Applicant's reply must identify the claims readable on the elected invention, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padmavathi v Baskar whose telephone number is (703) 308-8886. The examiner can normally be reached on M-F (6:30A.M-4: 00 P.M.) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

P. Baskar Ph.D.

12/20/02

*LFS*  
LYNETTE R. F. SMITH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600